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other creditors. Later he sued for the balance of his claim on the ground that his demand was one arising out of the defendant's fraud, and therefore not dischargeable under Bankruptcy Act July 1, 1898, c. 541, § 17 (4), 30 Stat. 550 (U. S. Comp. St. 1901, p. 3428). The bankrupt insisted that by presenting his claim in the bankruptcy court and accepting the dividends declared by it, plaintiff had waived the fraudulent character of the demand. *Held,* that presenting one's claim against a bankrupt's estate is not a waiver of the defendant's fraud, and not inconsistent with a right in the plaintiff to bring a subsequent action for fraud. *Standard Sewing Machine Co.* v. *Kattell* (1909), 117 N. Y. Supp. 32.

It seems difficult to distinguish the facts in this case from those in *Standard Varnish Works* v. *Haydock,* 143 Fed. 318, in which the plaintiff corporation had participated in a regular creditors' meeting and presented its claim against the bankrupt's estate, afterwards asking leave to withdraw its claim on the ground that its demand was not one dischargeable in bankruptcy within the section cited supra. It was held that by presenting its claim and participating in the creditors' meeting, plaintiff had waived the fraudulent character of the demand and was bound by its election. Obviously, a plaintiff ought not to be allowed to take part in creditors' meetings and influence the action of other creditors if his own claim is not to be affected thereby. Such a course is no less than fraud upon the other creditors. While affirming a sale and suing for damages for fraud in its inducement may not be so inconsistent as to prevent a joinder of such counts in a plaintiff's declaration, to prevent a variance between the allegations and the proof, (*Glover* v. *Radford,* 120 Mich. 542, 79 N. W. 803,) it would seem that they are so far inconsistent that having recovered upon one, as in the principal case, the plaintiff ought not to be allowed to bring a subsequent action upon the other. Such a course would also lead to embarrassing questions as to "splitting a cause of action" for "claims arising out of the same transaction," within the usual code provisions as to joinder of causes of action.

BILLS AND NOTES—USURY NO DEFENSE AGAINST A BONA FIDE HOLDER—CONSTRUCTION OF NEGOTIABLE INSTRUMENTS STATUTE—Plaintiffs who are holders in due course bring suit to recover the amount of a note. Defendants offer sufficient evidence to prove that there was usurious interest taken at the inception of the note. *Held* (Lehman, J., dissenting), that under the negotiable instruments statute (Laws of 1897 C. 612 ç 96), the defense of usury is not available against a bona fide holder of a note. *Klar et al.* v. *Kostiuk et al.* (1909,) 119 N. Y. Supp. 683.

This case is very near the border line and the opinion of the majority as to the precise point involved is not altogether sustained by the decisions of the New York courts. *Schlesinger* v. *Gilhooly,* 189 N. Y. 1, relied upon by GILDERSLEEVE, P. J. who delivered the opinion of the court, was decided by a divided court and the exact question, presented in the principal case, was not passed upon. SEABURY J. concurred in so far as the opinion holds that it was the purpose of the legislature in enacting § 96 of the Negotiable Instruments Law to make a radical change in the law of the state affecting negotiable paper, but held that *Schlesinger* v. *Gilhooly*, supra, was not an authority for the question decided in the principal case. The dissenting judge held that § 96 of the Negotiable Instruments Law was intended simply to put into the form of a statute the law of negotiable instruments as established by commercial custom and as declared by the courts. Before the enactment of the Negotiable Instruments Statute by one line of decisions a usurious consideration renders a bill or note entirely void even in the hands of a bona fide holder without notice. *Claflin* v. *Boorum*, 122 N. Y. 385; *Clarke* v. *Havard*, 111 Ga. 242, 36 S. E. 837, 51 L. R. A. 499. By another line of decisions the instrument is not absolutely void and cannot be taken advantage of against a bona fide assignee, without notice and before maturity. *Orr* v. *Sparkman*, 120 Ala. 9, 23 South 829. The majority in arriving at their decision must have come to the conclusion that the Negotiable Instruments Law by implication repeals the usury laws so far as applicable to holders in due course, and in this are supported by *Schlesinger* v. *Kelly*, 114 App. Div. 546, 99 N. Y. Supp. 1083 and *Wirt V. Stubblefield*, 17 App. Cas. D. C. 283.

BOUNDARIES.—STREET, TERMINUS A QUO. Plaintiff brought an action to recover a strip of land 19¼ feet by 75 feet, claiming under a deed recorded in 1900. Plaintiff's grantor had, after this grant, conveyed a ½ acre lot containing this strip to one B. who fenced in the strip in dispute and conveyed the ½ acre to defendant. The strip in question was at the east and rear end of the lot described in the deed to the plaintiff by which description he was to take land "bounded * * * west by Roberson St., having a frontage of 75 feet on Roberson St., and a length of 271 feet." The other boundaries were not in controversy. Measuring from the eastern edge of Roberson St., backward a distance of 271 feet, the strip of land sued for would be included within the lines laid down. The defendant however contended that in measuring off the 271 feet, the center and not the edge of Roberson St., was to be taken as a starting point. *Held*, that the measurement should begin at the eastern edge. *Bell* v. *Redd* (1909),—Ga.—, 65 S. E. 90.

The rule is well established that conveyances of land bounded by an existing street carry the title to at least the center of the way, unless there is something in the description showing a contrary intention. *Lemay* v. *Furtado*, 182 Mass. 280, 65 N. E. 395; *Thomas* v. *Hunt*, 134 Mo. 392, 35 S. W. 581, 32 L. R. A. 857; *Olin* v. *D. & R. G. R. Co.*, 25 Col. 177, 53 P. 454. Also, where a street is a boundary the rule seems to be well established that title will pass to the center of the street even if the measurements of the description carry the boundary only to the side of the street. *Newhall* v. *Ireson*, 8 Cush. 595; *Grant* v. *Moon*, 128 Mo. 43, 30 S. W. 328; *Gear* v. *Barnum*, 37 Conn. 229;*Cox* v. *Freedley*, 33 Pa. St. 124, 75 Am. Dec. 584; *Durbin* v. *Roanoke Bldg. Co.*, 107 Va. 753, 60 S. E. 86. Although the rule is thus well established when the street is the terminus ad quem, there seems to be little authority when it is the terminus a quo, and the point for the commencement of measurement is not expressly fixed as in the principal case. That in such a case the presumption is that measurement commences on the